

In the High Court of Punjab and Haryana at Chandigarh

Date of decision: 2.2.2010

State of Haryana Vs. M/s.AR Engineering Corporation and
another

CORAM: HON'BLE MR. JUSTICE PERMOD KOHLI

Present: Mr.RKS Brar, Addl. AG, Haryana,
for the petitioner.

None for the respondents.

PERMOD KOHLI, J.(Oral)

This revision petition is directed against the order dated 01.08.1991 passed by the learned Additional District Judge, Chandigarh, whereby the appeal preferred by the petitioner against the judgment dated 26.10.1987 passed by the learned Sub Judge Ist Class, Chandigarh, refusing to make the award rule of the Court, has been dismissed.

Briefly stated that the facts of the case are that on the basis of an arbitration agreement between the parties, the matter was referred to one Ajit M. Saran, Arbitrator. The Arbitrator made and published his award on 11.10.1985. The petitioner filed an application under Section 14 and 17 of the Arbitration Act for making the award

rule of the Court whereas the respondent filed objections under Section 30 of the Act seeking setting aside the award. It appears that both these applications were taken up together by the learned Sub Judge Ist Class, Chandigarh, for consideration. The trial Court framed the following issues:-

1. Whether the award dated 11.10.1985 is liable to be set aside? OPA
2. Relief.

While considering issue No.1, it has been held that the objections are not sustainable. The challenge to the award was made on two counts: (i) that the Arbitrator was appointed by designation and he has passed the award even after his transfer from the post of Additional Director, Industries, Haryana, (ii) that the Arbitrator has made the award beyond the period of four months. Both these objections have been rejected. It was found that the Arbitrator was by name and he was competent to proceed with the matter even after his transfer.

As regards the question of limitation is concerned, it has been specifically held that the Arbitrator entered on the reference on 17.06.1985 and award was made on 11.10.1985, within the statutory period of four months. The objections were, thus, rightly rejected.

As per the application filed by the petitioner for making the award the rule of the Court is concerned, the same has been dismissed having been filed beyond the period of 30 days.

It has come on record that the State made an application on 17.12.1985 to the Arbitrator for copy of the award. The copy of the

award was made available to the petitioner on 23.1.1986, whereas the present application under Sections 14 and 17 of the Arbitration Act came to be filed on 21.2.1986. The learned Sub Judge Ist Class, Chandigarh, has rejected the application being barred by limitation on the ground that the limitation commenced from the date of the making of the award. Article 119 of the Limitation Act (Part-I: Applications in specified cases) governed the period of limitation and reads as under:-

119	(a) for the filing in Court of an award	Thirty days	The date of service of the notice of the making of the award.
	(b) for setting aside an award or getting an award remitted for reconsideration.	Thirty days	The date of service of the notice of the filing of the award.

From the above Article, it is apparent that the limitation commenced from the date of notice of the making of the award. In the present case, there is no material on record to indicate that the petitioner had the notice of the award. The learned Trial Court has simply drawn an inference without there being any material on record. The clear averment made in the petition that copy of the award was received on 23.1.1986 and the petitioner had filed the application only on 21.02.1986 within limitation. Apart from the above, the petitioner had only asked for the making of the award rule of the Court and there was no prayer to the Court for filing of the award. The order passed by the learned Sub Judge Ist Class, Chandigarh, was assailed by the petitioner before the learned Additional District Judge, Chandigarh,

who has also dismissed the appeal affirming the judgment of the learned trial Court.

In view of the above, this petition is allowed. The impugned orders are set aside. The matter is remitted back to the learned trial Court for taking a fresh decision on merits.

The parties through their counsel are directed to appear before the learned trial Court on 25.05.2010 for further proceedings.

02.02.2010
BLS

(PERMOD KOHLI)
JUDGE